

**OPINION
73-450**

September 24, 1973 (OPINION)

Mr. Thomas B. Jelliff
State's Attorney
Grand Forks County
Grand Forks, North Dakota 58201

Dear Mr. Jelliff:

This is in response to your letter in which you state that you have been contacted by the Grand Forks Air Base regarding the question of whether or not the sale of alcoholic beverages to Air Base personnel is governed by state law. More specifically, are the sale and consumption of alcoholic beverages in NCO and officers' clubs governed by state law and may sales be made to any military personnel regardless of age. You then ask for an opinion on this question.

The basis question is whether or not the Air Base is exclusively under the jurisdiction of the United States laws or if it is subject to concurrent jurisdiction of both the federal and state laws or whether it is subject to state laws only.

Section 54-01-08 of the North Dakota Century Code provides as follows:

"54-01-08. JURISDICTION CEDED TO LANDS ACQUIRED BY UNITED STATES FOR MILITARY POST. - Jurisdiction is ceded to the United States over any tract of land that may be acquired by the United States on which to establish a military post. Legal process, civil and criminal, of this state, shall extend over all land acquired by the United States to establish a military post in any case in which exclusive jurisdiction is not vested in the United States, and in any case where the crime is not committed within the limits of such reservation."

It is noted that this section does not grant exclusive jurisdiction as is done with reference to Fort Lincoln under Section 54-01-09.

The acquisition of property within the state for Air Force activities in Grand Forks County took place subsequent to 1940. The law in effect at the time which will be given substantial consideration in answering your question is 40 USC 255. The pertinent provision of this section is the following:

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interest therein under his immediate jurisdiction, custody or control are situated, consent to or cession of such jurisdiction, exclusive or

partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted. (RS Section 355; June 28, 1930, c. 710, 46 Stat. 19; October 9, 1940, c. 793, 54 Stat. 1083.)"

This section was amended in 1970 in which the last sentence was changed to read as follows:

"Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." (underscored language is new)

This act was construed by the United States Supreme Court in *Adams v. United States*, 87 L Ed. 1421, 319 US 312. The Court in effect held that jurisdiction is not acquired by the United States nor is the military installation brought under the jurisdiction of the federal criminal laws unless and until the notice of acceptance has been given by the United States Government in the manner outlined in the statute, and that such notice must be filed with the Governor of the state before the United States will have exclusive jurisdiction on the military reservation.

The obvious inference from the United States Supreme Court decision is that state laws will apply and state jurisdiction is in existence until such time as a proper notice to the contrary is filed by the United States Government with the Governor of the state. The Supreme Court stated that jurisdiction is not transferred until the United States Government has accepted such transfer. This also implies that mere ownership of the property or the use of the property in itself does not shift jurisdiction.

In addition to the *Adams* case, *supra*, a number of State Supreme courts have had occasion to address themselves to the same problem. The South Dakota Supreme Court in *State v. Johnson*, 130 N.W.2d. 106, construed both the Federal Act, 40 USCA, 255, and appropriate state acts. The Court concluded that the state retain jurisdiction until there was an acceptance by the United States Government. This case involved driving while under the influence of alcoholic liquor. In addition to this state case, it was also held in another jurisdiction that the violation of game laws came within the state jurisdiction. See *Waltrip v. Commonwealth*, 53 S.E.2d. 14. A charge in state court involving indecent assault was sustained in *State v. Turner*, 401 P.2d. 443.

More significantly, the Colorado Supreme Court in *People v. Sullivan*, 378 P.2d. 633, had occasion to construe the Federal Act and the state act which is very similar to Section 54-01-08 of the North Dakota Century Code quoted *supra*. The Court concluded and held that even

though the state may have ceded jurisdiction, the Federal Act; namely, 40 USC 255, was controlling. The Court specifically noted that the state cannot compel the United States to accept exclusive jurisdiction and that the United State acquires jurisdiction pursuant to the Federal Act which by inference excludes any other method by which jurisdiction may be obtained. The State may not unilaterally cede or grant exclusive jurisdiction to the Federal Government.

We are not aware of any final decision which reaches a different conclusion on the question of jurisdiction.

The records of the Office of Governor and the Office of Secretary of State of the State of North Dakota do not contain any reference to any notice of any kind or that any has ever been filed with either one or the other office. We must therefore assume that the notice required to be filed as set out in 40 USC 255 has not, in fact, been filed or presented.

We have been provided with AR 210-65 relating to alcoholic beverages and AF Regulation 34-57. In examining AF Regulation 34-57, Section a3, we find that "Only adults will be allowed to purchase, possess, or drink alcoholic or malt beverages on an Air Force installation." An adult is defined in Section a1 to be "A person 21 years of age or over; or a person 18 years of age or over, except that persons 18 to 21 years of age are restricted with regard to the purchase, sale, serving, or consumption of alcoholic or malt beverages by the law of the state, territory, possession, or foreign country in which an installation is located."

In addition, we find that Section A3b also limits the sale to persons 21 or over unless permitted to do so under local law.

AR 210-65 contains similar provisions under Chapter 1-3b.

The aforementioned regulations seem to suggest that the authorities were cognizant of the jurisdiction question and particularly of the provisions of 40 USC 255.

The regulations are compatible with North Dakota laws pertaining to this subject.

Thus, in direct response to your question, any sale, purchase, possession and consumption of alcoholic beverages in NCO and officers clubs on a military reservation, in our opinion are governed by state laws in addition to any other limitations that may be imposed by military regulations or directives.

Section 5-01-08 and 5-01-08.1 of the North Dakota Century Code as amended pertaining to age would govern. Any violations of the aforementioned sections would be a violation of state law.

The opinion here is primarily concerned with the question of jurisdiction and the application of laws pertaining to the sale, purchase, possession and consumption of alcoholic beverages, but does not address itself to the question of taxation. Taxation of the product itself or the transaction is governed by other appropriate rules of law not necessarily concerned with the question of

jurisdiction discussed in this opinion.

We have had excellent cooperation with the military authorities and we have every reason to believe that mutual cooperation will continue.

Sincerely yours,

ALLEN I. OLSON

Attorney General